

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ILLINOIS

THE MEDICINES COMPANY,

Plaintiff,

v.

MYLAN INC., MYLAN  
PHARMACEUTICALS INC., and  
BIONICHE PHARMA USA, LLC,

Defendants.

No. 1:11-CV-01285

Hon. Amy J. St. Eve

Hon. Susan E. Cox, Magistrate Judge

**MYLAN'S MOTION TO EXCLUDE EXPERT OPINIONS THAT ASSUME  
PLAINTIFF'S PATENT CLAIMS REQUIRE THE ASP<sup>9</sup> IMPURITY  
MAXIMUMS TO BE MET ONLY "CONSISTENTLY"**

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This motion is filed pursuant to Federal Rule of Evidence 702, the Supreme Court's decisions in *Daubert Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) and *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999), and the Court's "Standing Order on Challenges to the Admissibility of Expert Testimony Under Rule 702 and *Daubert*." As detailed in Defendants' (collectively "Mylan") memorandum in support of this motion, Mylan respectfully moves this Court to preclude Plaintiff's ("TMC") expert witnesses from offering opinion testimony at trial that assumes that U.S. Patent No. 7,582,727 ("the '727 patent") requires the claimed Asp<sup>9</sup> impurity maximums to be met only "consistently." The defined term "consistently" is absent from the asserted patent claims and the parties both argued on summary judgment that the term should not be read into the patent claims. The Court relied upon that concurrence in deciding not to reach one of Mylan's arguments on summary judgment. Accordingly, TMC's experts should be precluded from offering any testimony premised upon the assumption that the '727 patent claims require that the Asp<sup>9</sup> maximums recited therein be met only "consistently."

Dated: January 31, 2014

Respectfully submitted,

By: /s/ James B. Coughlan  
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**CERTIFICATE OF SERVICE**

I, James B. Coughlan, hereby certify that on January 31, 2014, I electronically filed the foregoing **MYLAN'S MOTION TO EXCLUDE EXPERT OPINIONS THAT ASSUME PLAINTIFF'S PATENT CLAIMS REQUIRE THE ASP<sup>9</sup> IMPURITY MAXIMUMS TO BE MET ONLY "CONSISTENTLY"** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

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